

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**TITLE VIII
CONCILIATION AGREEMENT
Between**

**U.S. Department of Housing and Urban Development
Assistant Secretary of the Office of Fair Housing and Equal Opportunity
(Complainant)**

And

**City of Berlin, New Hampshire
(Respondent)**

**SECRETARY INITIATED COMPLAINT CASE NUMBER:
01-15-0017-8**

A. PARTIES AND SUBJECT PROPERTIES

1. The parties to this conciliation agreement are as follows:

a. Complainant

Assistant Secretary for the Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
451 7th Street, SW
Washington, D.C. 20410

b. Respondent

City of Berlin, New Hampshire
City Hall
168 Main Street
Berlin, New Hampshire 03570

Representing the City of Berlin, New Hampshire:

Christopher L. Boldt Esq.
Donahue, Tucker & Ciandella, PLLC
56 NH Route 25
P.O. Box 214
Meredith, NH 03253
Work Phone: (603) 279-4158 Fax: (603) 279-0681

The subject properties consist of all rental properties in the City of Berlin, New Hampshire which are subject to Ordinance 2010-16, Amending the Code of Ordinances, Chapter 8, Housing, Division 1, Section 8-176, Article III Disorderly Actions in Non-Owner Occupied Dwellings

B. STATEMENT OF FACTS

1. A complaint was filed on October 7, 2014 by the Assistant Secretary for Fair Housing and Equal Opportunity ("FHEO") alleging that the Respondent unlawfully discriminated against females by amending and enforcing its Code of Ordinances, Chapter 8, Housing, Division 1, Section 8-176, Article III Disorderly Actions in Non-Owner Occupied Dwellings, on December 20, 2010. The complaint alleged that the Ordinance was enacted to hold landlords responsible for their tenants and required landlords to evict tenants cited for three or more incidents of "disorderly behavior" or risk losing their rental license and/or be subject to fines. The definition

of "disorderly behavior" in the Ordinances does not address any reference to "domestic violence incidents or disturbances that do not require that a mandatory arrest be made." FHEO also alleged that the Ordinances had a disproportionate effect on females who suffer from domestic violence incidents.

2. The City of Berlin contends that the Ordinances sought to reduce the numerous instances of disorderly behavior to which the Berlin Police Department had to respond at predominately tenant-occupied properties and to preserve the peaceful enjoyment of other residents nearby. Respondent states that the Ordinances are gender-neutral and therefore do not have a disproportionate effect on females or females who suffer from domestic violence incidents. Respondent states that if domestic violence occurs, and there is probable cause to believe that such a crime was committed, the Berlin Police Department is required by its own policy and procedure to arrest the offender and not the victim of domestic violence. Nevertheless, and without any admission of wrongdoing, Respondent agrees to settle the claims in the underlying actions by entering into this Conciliation Agreement.

3. Within 30 days of the Effective Date of this Agreement, the City of Berlin, New Hampshire will amend the Ordinance to specifically exempt from the ordinance those incidents where the resident is a victim of domestic violence. The amendments will be as follows:

- a. Add a new sentence at the end of Sec. 8-176 (which is the Statement of Purpose): This Ordinance is not intended to be used against victims of reported incidents of domestic violence.
- b. Add a new sentence at the end of Sec. 8-177's definition of "Disorderly Action": "Disorderly Action" shall not include the directly related actions of a victim of a reported incident of domestic violence.

The amendments will be effective immediately upon enactment by the City Council.

C. TERM OF AGREEMENT

This Conciliation Agreement (hereinafter "Agreement") shall govern the conduct of the parties to it for a period of two (2) years from the effective date of the Agreement.

D. EFFECTIVE DATE

1. The parties expressly agree that this Agreement constitutes neither a binding contract under state or federal law nor a Conciliation Agreement pursuant to the Act, unless and until such time as it is approved by the Department, through the Assistant Secretary of the Office of FHEO and the FHEO Regional Director or his or her designee.

2. This Agreement shall become effective on the date on which it is approved by the Assistant Secretary for the Office of FHEO, U.S. Department of Housing and Urban Development.

E. GENERAL PROVISIONS

1. The parties acknowledge that this Agreement is voluntary and constitutes a full settlement of the claims set forth in the complaint in the above-referenced cases. The parties affirm that they have read and fully understand the terms set forth herein. The parties agree that they have not been coerced, intimidated, threatened, or in any way forced to become a party to this Agreement.

2. The Respondent acknowledges that it has an affirmative duty pursuant to 42 USCS §3604 not to discriminate under the Act and that it is unlawful to retaliate against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Act. The Respondent further acknowledges that any subsequent retaliation or discrimination after the effective date of this Agreement constitutes both a material breach of this Agreement and a statutory violation of the Act.

3. This Agreement, after it has been approved by the Assistant Secretary, FHEO or his or her designee and the FHEO Regional Director, is binding upon the Complainant, the Respondent, their respective employees, heirs, successors and assigns and all parties to this Agreement.

4. The parties understand that upon approval of this Agreement, this Agreement is a public document, pursuant to 810(b)(4) of the Act.

5. This Agreement does not in any way limit or restrict the Department's authority to investigate any other complaint involving the Respondent made pursuant to the Act, or any other complaint within the Department's jurisdiction. This Agreement does resolve all issues that are raised or could have been raised in the complaint.

6. No amendment to, modification of, or waiver of any provisions of this Agreement shall be effective unless: (a) all signatories or their successors to the Agreement agree in writing to the amendment, modification, or waiver; (b) the amendment, modification, or waiver is in writing; and (c) the amendment, modification, or waiver is approved and signed by the Assistant Secretary, FHEO and Regional Director, Boston Office.

7. The parties agree that the execution of this Agreement may be accomplished by separate execution of consents to this Agreement, and that the original executed signature pages attached to the body of the Agreement constitute one document.

8. The Assistant Secretary of FHEO hereby forever waives, releases, and covenants not to sue the Respondent and its respective heirs, executors, assigns, officers, commissioners, agents, employees and attorneys with regard to any and all claims, damages, and injuries of whatever nature, whether presently known or unknown, arising out of or in any way related to the subject matter of HUD Case Numbers 01-15-0017-8 or which could have been filed in any action or suit arising from said subject matter.

9. The Respondent hereby forever waives, releases, and covenants not to sue the Department, its heirs, executors, assigns, successors, agents, officers, employees, and attorneys with regard to any and all claims, damages, and injuries of whatever nature whether presently known or unknown, arising out of the subject matter of HUD Case Numbers 01-15-0017-8 or which could have been filed in any action or suit arising from said subject matter.

F. RELIEF IN THE PUBLIC INTEREST

1. Within thirty (30) days of the effective date of this Agreement, Respondent shall post a copy of this Agreement on its website and allow an opportunity for all City employees to have any questions concerning the Agreement answered. Respondent will retain a copy in its City Hall for the public to review upon request.

2. Within forty-five (45) days of the effective date of this Agreement, Complainant shall provide to Respondent the name and credentials of a fair housing source that Respondent may contract with to provide fair housing training as outlined in Provision 3 below. Alternatively, Respondent may provide the Complainant with the name and credentials of such a source which Respondent proposes to use for such training subject to Complainant's prompt approval.

3. Within sixty (60) days of the effective date of this Agreement, Respondent shall submit to the Department for review and approval the training curriculum that the Department's approved fair housing instructor will provide to:

a. The Mayor, all Councilmembers, the City Manager, Chief of Police, and all other City employees who have interaction with victims of crime or abuse (i.e., police officers) ("the Group") or authority to enact an ordinance pertaining to Disorderly Actions in Non-Owner Occupied Dwellings. The fair housing training shall.

- i. be at least three (3) hours in length;
- ii. have an emphasis on sex/gender discrimination; and

iii. Violence Against Women Act requirements.

4. Within one hundred and twenty (120) days of the effective date of this Agreement, Respondent shall have the Group undergo the Provider's approved fair housing training. The parties recognize that the training session may be recorded so that members of the Group do not have to attend the same session to comply with this Agreement.

5. Within ninety (90) days of hiring new employees and/or Councilmembers, who have interaction with victims of crime or abuse or authority to enact an ordinance pertaining to Disorderly Actions in Non-Owner Occupied Dwellings, these persons shall undergo the Department's approved fair housing training by the mutually agreed upon fair housing instructor. For purposes specific to Provision 5, new employees and/or Councilmembers hired after the annual fair housing training may view the most recently recorded fair housing training that was provided by the Department's approved fair housing source.

6. Within ninety (90) days of the effective date of this Agreement, ^{Respondent}~~Complainant~~ shall provide to ^{Complainant}~~Respondent~~ an education and outreach brochure concerning rights regarding the Fair Housing Act. The brochure shall contain:

a. The express statement that Respondent encourages all tenants to call the police when they are in need of assistance and that the City of Berlin does not discourage victims of crime or disorderly behavior from calling the police.

b. A summary of rights under the Fair Housing Act and how someone can report a claim of discrimination, including HUD's Fair Housing Hotline Number.

This brochure shall be provided to tenants when police arrive at a unit for an instance of alleged disorderly behavior and the officer believes that it is an incident of domestic violence and to landlords when they apply for their rental license and when they renew their license during the term of this Agreement.

7. Within thirty (30) days of amendment of the Disorderly Actions in Non-Owner Occupied Dwellings, Respondent shall place notice in the newspapers serving the City of Berlin New Hampshire and place a copy of the notices placed on its website.

8. Within one hundred-eighty (180) days of the effective date of this Agreement, Respondent shall partner with and seek guidance from a local domestic violence advocacy group to host a community service activity that will raise awareness about domestic violence ("the Activity").

9. Within forty-five (45) days prior to the date of the Activity, Respondent shall submit to the Department a draft of its notification that will be used to inform the public about said Activity.

10. Within forty-five (45) days prior to the date of the Activity, Respondent shall publicize the Activity that will help raise awareness about domestic violence.

11. Within three hundred-sixty (360) days of the effective date of this Agreement, the Activity shall occur that was developed under the guidance of a local domestic violence advocacy group that will help raise awareness about domestic violence. This Activity is to occur annually for the duration of the Agreement.

G. MONITORING

The Department shall determine compliance with the terms of the Agreement. During the term of the Agreement, the Department may review compliance with this Agreement. As part of such review, the Department may examine witnesses and copy pertinent records of the Respondent. Respondent agrees to provide its full cooperation in any monitoring review undertaken by the Department to ensure compliance with this Agreement.

H. REPORTING AND RECORDKEEPING

1. Within sixty (60) days of the effective date of this Agreement, Respondent shall certify that it has posted a copy of the Agreement on its website and provided an opportunity to all employees to answer questions, and retained a copy of the Agreement in its Municipal Building as required by Provision F.1.

2. Within one hundred and twenty (120) days of the effective date of this Agreement, Respondent shall submit certifications of training completion for all participants of the mandatory training outlined in Provisions F.3 and F.4.

3. Within one hundred and thirty (130) days of any new hire who will be required to take the training outlined in Provision F.5, Respondent shall submit certifications of training completed.

4. Within one hundred and twenty (120) days of the effective date of this Agreement, Respondent shall submit a copy of its brochure as required in Provision F.6. Annually for the duration of the Agreement, the Respondent shall certify that it meets the requirements of distributing this brochure (i) to tenants when police arrive at a unit for an instance of alleged

disorderly behavior and the officer believes that it is an incident of domestic violence and (ii) to landlords when they apply for their rental license and when they renew their license.

5. Within (30) days of the publication of notices required by Provision F. 7, Respondent shall provide copies of the notices to the Department.

6. Annually for the duration of this Agreement, Respondent shall certify completion of the Activity outlined in Provisions F.8 through F.11. within thirty (30) days of completion of the Activity.

7. Annually for the duration of this Agreement, Respondent shall report to the Department all complaints of housing discrimination received by the Municipality, including the name of the complainant, a summary of the allegations, what steps the Municipality took to investigate the claim, and the outcome of the investigation.

8. All required certifications and documentation of compliance must be submitted to:

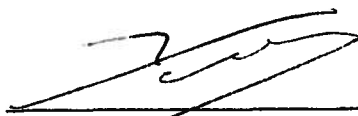
Susan M. Forward, Region 1 Director
Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
Thomas P. O'Neill Jr. Federal Building
10 Causeway Street
Boston, MA 02222-1062

I. CONSEQUENCES OF BREACH

Whenever the Department has reasonable cause to believe that the Respondents have breached this Agreement, the matter may be referred to the Attorney General of the United States, to commence a civil action in the appropriate U.S. District Court, pursuant to §§ 810(c) and 814 (b)(2) of the Act.

J. SIGNATURES

By signing below, the signatories agree that they intend to be legally bound, and represent that they have the authority to execute this Agreement on behalf of the party they are signing for.



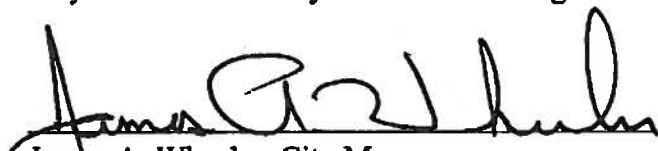
Assistant Secretary for the Office of FHEO
U.S. Department of Housing and Urban Development

Date

1/29/15

K. SIGNATURES

By signing below, the signatories agree that they intend to be legally bound, and represent that they have the authority to execute this Agreement on behalf of the party they are signing for.


James A. Wheeler, City Manager
Duly Authorized,
City of Berlin, New Hampshire

1/27/15
Date

Cer

JW
1/27/15

City agrees to amend ordinance to exempt domestic violence victims



Published Date Wednesday, 28 January 2015 20:58
Written by Barbara Tetreault



BERLIN – As a result of a federal complaint, city will amend its disorderly tenant ordinance to exempt domestic violence victims from the requirement that landlords evict tenants who are cited for three disorderly actions in any 12-month period.

Last October, the assistance secretary for Fair Housing and Equal Opportunity, filed a complaint alleging the ordinance unlawfully discriminated against women and especially women who suffer from domestic violence incidents.

The city responded that the ordinance was enacted to "reduce the numerous instances of disorderly conduct to which the Berlin Police Department had to respond at predominately tenant-occupied properties and to preserve the peaceful enjoyment of other residents nearby." The city also argued the ordinance was gender-neutral. Furthermore, the city said if police believed there was probable cause that a crime had been committed, department policy and procedures called for arresting the offender and not the victim of domestic violence.

At its work session Monday night, the city council agreed to amend the ordinance as part of a conciliation agreement with the office of the FHEO.

City Manager James Wheeler said the city never intended to discriminate against victims of domestic violence and don't believe that it happened.

Under the agreement, the city does not admit wrongdoing but agrees to amend the ordinance within 30 days. The amendment will state that the ordinance is not intended to be used against victims of reported incidents of domestic violence. The definition of disorderly conduct will be also be amended to state it does not include "the directly related actions of a victim of a reported incidence of domestic violence".

In addition:

- * The mayor and council, city manager, and police chief must also undergo three hours of fair housing training with an emphasis on sex/gender discrimination and Violence Against Women Act requirements. The training can be videotaped so those who cannot attend or new employees and councilors can view it. Wheeler said Berlin Housing Authority Executive Director Mary Jo Landry has that training available free for the city.

- * The city has to develop an education and outreach brochure outlining the rights provided by the Fair Housing Act. The brochure has to state that the city encourages all tenants to call the police when they need assistance and that the city does not discourage victims of crime or disorderly conduct from calling the police. The brochure must be provided to landlords when they apply and renew their license and to tenants on disorderly conduct calls where the officer suspects it is an incident of domestic violence.

- * The city must partner with a local domestic violence advocacy group to host an annual community service activity to raise awareness of domestic violence.

The agreement remains in effect for two years.

The city enacted the disorderly conduct ordinance in 2010 as part of its effort to crack down on so-called slum landlords. Under the ordinance, if there is a disorderly conduct report and the police determine the report is valid, the tenant and landlord are given a written report. Three incidents by the same tenant in a 12-month period force the owner to begin eviction proceedings against the tenant within ten working days. Failure to begin eviction proceedings results in the suspension of the owner's certificate of compliance. Once a tenant is evicted, he or she cannot reoccupy any of the owner's units in the same building for one year.

**Outline: HUD Deliverables Concerning the
Lesbian, Gay, Bisexual, Transgender, & Queer/Questioning (LGBTQ) Populations**

- **Background:**
 - **Obama Administration & LGBTQ Initiatives**
 - Under the Obama Administration, the federal government has made historic strides to advance equality and opportunity for the LGBTQ community.
 - In 2009, the President signed the Matthew Shepard Act, which expanded federal hate-crime law to include actions motivated by a victim's actual or perceived gender, sexual orientation, and/or gender identity.
 - In 2010, the President instructed the Department of Health and Human Services to develop rules that would prohibit hospitals from denying visitation privileges on the basis of sexual orientation and gender identity.
 - In 2010-2011, the government repealed "Don't Ask Don't Tell," allowing openly homosexual and bisexual persons to serve in the armed forces.
 - In 2013, in reauthorizing the Violence Against Women Act, Congress expanded federal protections available to gays, lesbians, and transgender individuals.
 - In the landmark 2013 Supreme Court case of *United States v. Windsor*, the Department of Justice refused to defend the constitutionality of Section 3 of the Defense of Marriage Act (which defined marriage as a union between a man and woman), and filed a brief urging the Court to strike down this provision.
 - Earlier this year, Attorney General Eric Holder released a strong statement in support of the equal protection and equal treatment of same-sex marriages in anticipation of further cases that the Court will hear concerning the constitutionality of these marriages.
 - In the 2015 State of the Union, the President reaffirmed his commitment to such progress, mentioning words such as "lesbian," "bisexual," and "transgender," for the first time in the long history of this speech.
 - **Prior HUD Initiatives Regarding LGBTQ Populations**
 - In 2010, HUD amended the "Civil Rights Threshold" found in its Notices of Funding Availability (NOFAs) to require that funding recipients comply with state and local laws prohibiting discrimination on the basis of sexual orientation or gender identity.
 - In 2010, HUD's Office of General Counsel issued a legal memorandum concluding that the Fair Housing Act's prohibition on sex discrimination covers discrimination based on nonconformity with gender stereotypes (i.e. sexual orientation or gender identity).
 - In June 2013, HUD's Office of Policy Development and Research (PD&R) published "An Estimate of Housing Discrimination Against Same-Sex Couples," an examination of 50 metropolitan markets that

- **The Equal Access Rule**

- **Background**

- On February 3, 2012, HUD issued a final rule (“The Equal Access rule”) to clarify that housing assisted or insured by HUD must be made available without regard to sexual orientation, gender identity, or marital status.
 - The Equal Access rule applies to the Department’s rental assistance and homeownership housing and housing-related service programs, including the Federal Housing Administration (FHA) mortgage insurance programs, community development programs, and public and assisted housing programs.

- **PIH Action:**

- In August 2014, the Office of Public and Indian Housing published a Notice entitled “Program Eligibility Regardless of Sexual Orientation, Gender Identity or Marital Status as Required by HUD’s Equal Access Rule” that provides guidance on the application of the Equal Access Rule to HUD-assisted housing programs administered by public housing agencies (PHAs).
 - Amongst other conclusions, the Notice stated that, although the Fair Housing Act does not explicitly include sexual orientation, gender identity, or marital status as protected classes, under certain circumstances, complaints involving sexual orientation or gender identity might be investigated under the Fair Housing Act.
 - The Notice mandated that, upon receipt of a complaint from an applicant or participant alleging a violation of the Equal Access Rule, the PHA must determine if a program violation occurred and implement appropriate corrective action.
 - The Notice also provided examples of violations of the Rule:
 - A gay man receiving rental assistance under HUD’s Project-Based Voucher (PBV) who has a request to add his income-eligible male partner to the unit’s lease denied by a property owner based upon the resident’s same-sex relationship is protected because the denial was based on sexual orientation and/or marital status.
 - A female applicant who brings another woman to a PHA office, and while completing program verifications, puts her arm around that woman, and then has her application rejected by a PHA employee who believes they are a lesbian couple would be protected under the Act because the denial of housing assistance was based on perceived sexual orientation.

- **Potential Housing Action**

- I promise to encourage and assist HUD’s Fair Housing Administration to issue a Notice to lenders who partner with our Office of Single Family

Officer (OCHCO) in the development of programming, training, and other initiatives centered on LGBT issues.

- The Secretary's Asks
 - Regarding HUD's LGBTQ Youth Homelessness Prevention Initiative ("True Colors")
 - I'm asking you to follow the progress of this exciting Initiative, and, when we release the results of our work, to advocate that your local city governments and encourage them to adopt our implementation guides and best practices within your own areas.
 - Regarding the Fair Housing Act & Housing Discrimination
 - Report *all* incidents of housing discrimination based on sexual orientation or gender identity to HUD's Office of Fair Housing and Equal Opportunity, regardless of whether HUD-related properties are involved.
 - Currently the federal Fair Housing Act – which prohibits housing discrimination based on race, color, religion, origin, sex, familial status, and disability – does not explicitly prohibit *all* housing-related entities from discriminating based on sexual orientation or gender identity.
 - As of now, only entities receiving assistance from HUD are mandated to avoid such discrimination (based on our 2012 Equal Access Rule).
 - However, the more complaints we receive, the more data we can collect on the frequency of such discrimination.
 - This will allow us to more effectively advocate for amendment of the Fair Housing Act to include protections for the LGBTQ community.
 - Moreover, you can report such violations through the FHEO mobile app, which is now available on both Apple and Android devices.